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## TOWN ATTORNEY REPORT

DATE: August 27, 2003

FROM: Monroe D. Kiar

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Town Attorney's Office has in the past, spoken with Mr. Cohen, who indicated that negotiations with URS have been ongoing. Mr. Cohen indicated that URS was requested to provide the Town with a Memorandum of Services setting forth their anticipated costs for each service to be rendered to enable the Town to determine the precise cost of the project and to determine if there are funds available to allow URS to conduct such services. A response has been received by the Town. On August 27, 2003 and August 28, 2003, Mr. Stanley Cohen met individually with each Councilmember as well as Town Staff and the Town Attorney relevant to exploring the feasibility of the Town acquiring the Sunrise Water System and the Ferncrest Facility. Mr. Stanley Cohen and the Town Staff are conducting further studies regarding acquisition of the Western Area Utilities as well as the Ferncrest Utilities Facility in the East and are continuing dialogue with the City of Sunrise.
2. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. Pursuant to the direction given to Mr. Burke by the Davie Town Council, an appeal of the Order entered by Judge Cocalis was filed with the 4<sup>th</sup> District Court of Appeal, but the 4<sup>th</sup> District Court of Appeal denied the Town's Petition for Writ of Certiorari on the Merits and Without Opinion, ordered that the matter be remanded back to the Town Council and required it to vote on the application based on the record as it existed prior to the filing of the Writ of Certiorari and in accordance with the Final Judgment entered by Judge Cocalis. The Petitioner requested the matter again be placed on the Town Council Agenda and the matter was again heard on October 2, 2002,

by the Town Council. After a presentation by Mr. Burke, the applicant and Staff evidence was presented by those in attendance who spoke in favor and in opposition to the two Petitions, the Town Council voted 4 to 1 to deny each petition. A Petition for Supplemental Relief to Enforce Mandate or in the Alternative, Supplemental Complaint for Writ of Mandamus and for Writ of Certiorari was thereafter filed by the Plaintiff, Griffin-Orange North, Inc. and Seventy-Five East, Inc. with regard to the Quasi Judicial Hearing held before the Town of Davie on October 2, 2002. The Plaintiffs have filed these pleadings requesting that the Court order the Town of Davie to grant them the B3 Zoning and they are seeking a recovery of their attorney's fees and court costs for their preparation of the filing of this new Petition for Supplemental Relief to Enforce the Court's Mandate. Essentially, the pleadings request that the Circuit Court quash the Town Council's second denial of the Plaintiffs' Zoning Application and request that the Court compel approval of the B3 Zoning designation. The Plaintiffs filed their pleadings with the same Court (Judge Cocalis) which previously entered a Final Judgment in favor of Plaintiffs, and also filed an identical original action to cover all of their procedural basis. Subsequent thereto, the Plaintiff filed a Motion to Consolidate the Petition for Supplemental Relief to Enforce Mandate as well as the second lawsuit it initiated and requested that both lawsuits be heard before the original judge in this case, Judge Cocalis, who is no longer in the Civil Division, rather than Judge Robert Carney, who has taken over Judge Cocalis' prior case load. The hearing on the Petitioner's Motion to Consolidate a new Petition for Writ of Certiorari with its previously filed action was heard on December 17, 2002. Judge Carney the property owner's Motion to Consolidate, but denied the property owner's second Motion, which was to transfer both actions back to Circuit Court Judge Patricia Cocalis. On January 30, 2003, there was an initial hearing and oral argument was presented by both sides before Judge Robert Carney relevant to the property owner's Motion to prohibit the Town of Davie Administrator from proceeding with Administrative re-zoning of the property. At the January 30, 2003 hearing, Judge Carney stated he wanted to hear more argument on this matter and scheduled another hearing for February 14, 2003. On February 14, 2003, the Judge denied the Writ of Prohibition and Motion to Stay and as indicated, in his view, the Court did not have jurisdiction to prevent the Town of Davie from carrying out its municipal function of re-zoning property. Accordingly, as confirmed by Mr. Burke, there are no legal impediments to the Town moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. However, at the Town Council Meeting of May 7, 2003, the Town of Davie and the property owner entered into an agreement which was filed with the Court and approved by the Town Council which would temporarily abate all litigation activities in the pending lawsuit as well as abate the moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. This agreement was entered into to enable the County to obtain an appraisal and to continue its negotiations in an effort to possibly purchase the subject properties as a public park. At the July 2, 2003 Town Council Meeting, Councilmember Paul advised the Town Council that the County had completed its appraisal and the County and property owner had reached agreement as to the purchase price. The Council had previously been advised that this matter was to be heard and considered by the County Commission at its meeting in August, 2003 and accordingly, an Agreed Motion to Extend the Abatement of this litigation was prepared by Mr. Spencer, the attorney for the property owner, and reviewed by the Town Attorney's Office and subsequently approved by the Town Council

at its July 8, 2003 Meeting. The Agreed Motion has been filed with the Court and the litigation continues to be abated pending final disposition by the County. The Town Attorney spoke with Mr. Burke on August 26, 2003, and he indicated that it is his understanding that the County Commission will now be hearing this matter at its September 16, 2003 Meeting.

3. **Town of Davie v. Malka:** As the Town Council has been previously advised, the Town Attorney's Office has kept close contact with the Building Department relevant to the progress of this particular property. The Building Department is continuing to keep a close eye on this particular property owner to ensure that the property owner is moving ahead with final completion of all additions of the structure as promised. Recently, the Town Attorney spoke with the Town's Building Official and was advised that this property owner is current with all of his inspections to date. Our Building Official has further advised that the property owner is moving ahead as promised and that there have been no recent complaints from the community.
4. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** As indicated in prior Litigation Reports, on May 24, 2002, Judge Fleet issued a 19 page Order on the Motion for Temporary Injunction in which he concluded that the Amendments regarding the Citrus Canker litigation enacted by the Florida Legislature as codified in Florida Statutes Section 581.184, was an invalid invasion of the constitutional safeguard contained in both the United States Constitution and the Constitution of the State of Florida. The Judge ultimately entered a statewide Stay Order enjoining the Department of Agriculture from entering upon private property in the absence of a valid search warrant issued by an authorized judicial officer and executed by one authorized by law to do so. The Florida Department of Agriculture and Consumer Services filed its Notice of Appeal seeking review by the 4<sup>th</sup> District Court of Appeal. The Department of Agriculture also filed a Motion with the 4<sup>th</sup> District Court of Appeal seeking that the appellate procedures be expedited, and a motion in which there was a suggestion for "bypass" certification to the Supreme Court of Florida. The Department of Agriculture contended that in light of the gravity and emergency nature of the issues, the matter should be certified by the 4<sup>th</sup> District Court of Appeal directly to the Supreme Court for its adjudication since the Department of Agriculture anticipated that regardless as to how the 4<sup>th</sup> District Court of Appeal rules on the matter, it would in fact be appealed by either the Department of Agriculture or by the County and coalition of cities to the Supreme Court of Florida for final adjudication. The 4<sup>th</sup> District Court of Appeal in fact for only the fourth time in its history, did certify this matter directly to the Florida Supreme Court for adjudication. The Florida Supreme Court however, refused to hear this matter at this stage and remanded it back to the 4<sup>th</sup> District Court of Appeal for further proceeding. Both the Florida Department of Agriculture and Consumer Services and the County and coalition of cities have filed their respective Appellate Briefs. The Florida Department of Agriculture filed a Reply Brief to the Brief filed by Broward County and the coalition of cities. The Town Attorney along with several other municipal attorneys, at the request of the Chief Appellate Attorney for Broward County, Andrew Meyers, attended the oral argument in these proceedings before a three judge panel at the 4<sup>th</sup> District Court of Appeal Courthouse in Palm Beach County, on December 4, 2002. On January 15, 2003, the 4<sup>th</sup> District Court of Appeal issued its opinion relevant to the appeal filed by the Florida Department of Agriculture and Consumer Services challenging the Order of Judge Fleet. The 4<sup>th</sup> District

Court of Appeal found that Section 581.184 of the Florida Statutes (2002) requiring removal of Citrus trees within the 1900 feet of a tree infected with canker did not violate due process and therefore, was constitutional. The 4<sup>th</sup> District Court of Appeal also found Section 933.07(2) of the Florida Statutes allowing area wide search warrants unconstitutional and a violation of the 4<sup>th</sup> Amendment. The Court however, did rule that multiple properties to be searched may be included in a single search warrant and the issuance of such a warrant should be left to the discretion of the issuing magistrate. The 4<sup>th</sup> District Court of Appeal entered an Order quashing Judge Fleet's Order and in response, the County and coalition of cities, including the Town of Davie, filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court and to review the decision of the 4<sup>th</sup> District Court of Appeal. The Notice to Invoke Discretionary Jurisdiction also requested the re-imposition of a temporary stay. The Supreme Court entered an Order agreeing to review this matter, but refused to re-impose the automatic stay prohibiting the removal of healthy, but exposed Citrus trees during the pendency of this litigation. The Florida Department of Agriculture has resumed cutting healthy, but exposed trees in Central and North Palm Beach as well as in the cities of Cape Coral and Orlando. As indicated in the last several Town Attorney's Reports, the County continues to aggressively oppose the issuance of warrant applications in Broward County regarding the cutting of healthy, but exposed Citrus trees. On July 7, 2003, a hearing was held before Judge Fleet on the coalition of cities and County's Motion for Reinstatement of a Temporary Injunction with regard to the eradication of healthy, but exposed trees within 1900 feet of an infected tree. The Judge heard extensive oral argument on both sides and afterwards, ordered the Department of Agriculture and Consumer Services to comply with a prior Order concerning the method in which the Department is to measure the 1900 foot zone surrounding a Citrus tree within which exposed Citrus trees must be destroyed. The Court issued a written Order granting a Temporary Injunction (the "Temporary Injunction Order"). The Temporary Injunction Order prohibits the Department from using a method of measurement that substantially departs from the 1900 foot tree to tree measurement expressly required by Section 581.184(4)(c), Fla. Stat. (2002). The Temporary Injunction Order also prohibits a material violation of the 1900 foot destruction radius mandated by Section 581.184(1)(b) and Section 581.184(2)(a). The Temporary Injunction prohibits the Department from cutting down trees on the basis of past samples that were the product of flawed chain of custody and diagnosis procedures which procedures the Department itself has since abandoned. Under the Court's ruling now in effect, the Department of Agriculture must measure precisely from the infected tree to the drip line of any uninfected, but exposed tree within the 1900 foot zone rather than using satellite technology to set the 1900 foot radius. The Order granting the Temporary Injunction has been appealed by the Florida Department of Agriculture to the 4<sup>th</sup> District Court of Appeal and that Appeal is pending. The Chief Appellate Attorney for Broward County has indicated that oral argument in the original "Fleet Case" is scheduled for October 7, 2003 before the Supreme Court in Tallahassee.

5. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. In response, the Plaintiffs filed an Amended Complaint naming the Town of Davie only as a defendant. Officer Taylor was no longer named a party to these proceedings. The Town thereafter,

filed a Motion to Dismiss the Amended Complaint, but after hearing the Motion to Dismiss, it was denied and the Plaintiff was given leave to file a new Amended Complaint in these proceedings. On August 27, 2003, the Town Attorney spoke with Mr. McDuff who indicated that his office had received the Amended Complaint and had prepared and filed an appropriate Answer with the Court. Mr. McDuff indicated that his office is continuing to conduct discovery in this matter and is preparing for trial. He continues to remain confident that ultimately, this matter will be dismissed on the merits.

6. **Spur Road Property:** As indicated by Mr. Willi to the Town Council at its meeting of January 2, 2003, Mr. Burke advised Mr. Willi that the 4<sup>th</sup> District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carmichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the Town Council Meeting of February 5, 2003, Mr. Willi requested that the Town Council grant him authority to take whatever legal action was necessary to obtain the property in question. That authority was given to him by the Town Council.
7. **Peter Castagna v. Officers Brito and Williams:** Peter Castagna filed a lawsuit against Officers Daniel Brito and Paul Williams alleging an action for damages pursuant to Title 42 U.S.C. 1983, for alleged false imprisonment, battery and alleged intentional infliction of emotional distress. The outside legal counsel assigned by the Florida League of Cities to defend the police officers at the League's expense, filed a Motion to Dismiss the lawsuit instituted by Mr. Castagna. Prior to the Motion being heard, the attorneys for Mr. Castagna filed an Amended Complaint and our special outside legal counsel thereafter, filed a Motion to Dismiss the Amended Complaint. Said Motion was denied and the Town thereafter, filed its Answer and Affirmative Defenses to the First Amended Complaint. The Town also filed a Motion for Summary Judgment and incorporated Memorandum of Law which is pending. The case had originally been scheduled for trial in May, 2003, but the Judge's Judicial Assistant contacted Mr. McDuff's firm to advise him that the Calendar Call had been canceled and the trial put on hold as the Judge intended to rule on the Motion for Summary Judgment. As previously indicated, the Court entered an Order granting the Town of Davie's Motion for Summary Judgment as well as the Final Summary Judgment in favor of the Town and against the Plaintiff, Peter Castagna. On August 27, 2003, the Town Attorney spoke with Mr. McDuff who indicated that although he had previously anticipated that the Plaintiff would file a Notice of Appeal of the Order of the Court granting the Town's Motion for Summary Judgment, the Plaintiff never did and therefore, the 30 days in which to do so had run and the Final Summary Judgment in favor of the Town is now finalized. As this Office previously advised the Town Council, although the Town had filed a Motion to Tax Costs against the Plaintiff, Mr. McDuff has since learned that the Plaintiff is indigent and therefore, the Motion to Tax Costs is a moot issue. This matter is now concluded and both Mr. McDuff and the Town Attorney's Office will be closing their respective files in this matter.
8. **Pelican Coast Holdings, Inc. and William Cuthbertson v. Town of Davie:** A Petition for Certiorari was served upon the Town along with an Order to Show Cause signed by Judge Burnstein requiring the Town of Davie to show cause why the relief requested in the

Petition for Certiorari should not be granted. On July 22, 2002, Appellee, Town of Davie, filed its response to the Petition for Writ of Certiorari and Pelican Coast Holdings, Inc. and William Cuthbertson have since filed their Reply Brief. Oral argument in this matter was held on October 3, 2002 and thereafter, both side submitted Memorandum of Law in support of their respective positions. On October 28, 2002, Judge Burnstein issued her Order in this case. The Court granted the Petition for Writ of Certiorari and quashed the condition imposed by the Town Council at its May 15, 2002 Meeting that the owner of the property obtained a "special permit" from the Council, if the owner seeks to serve alcoholic beverages at the site. The Court does however, make clear that the owners and users of the property are bound by the separation requirements for alcoholic establishments, but the Court proposes that the Town would be able to monitor the owner's compliance through its occupational licensing regulations. The Court has also ruled that the Petitioner is entitled to recover its attorney's fees in prosecuting the appeal. A copy of Judge Burnstein's Order of October 28, 2002 has been previously provided to the Mayor and Councilmembers. At the first meeting in November of the Davie Town Council, the Council authorized Mr. Burke's firm to file the necessary paperwork to challenge Judge Burnstein's Order of October 28, 2002. Pursuant to the Council's instructions, a Petition for Writ of Certiorari was filed on behalf of the Town of Davie with the 4<sup>th</sup> District Court of Appeal. The Petition was reviewed by a 3 judge panel of the 4<sup>th</sup> District Court of Appeal and the Town Attorney has been advised by Mr. Burke that the Court has denied the Town's Petition for Writ of Certiorari, but also denied the request of the property owner for an award of attorney's fees on the appellate level. The Town Attorney's Office received a copy of the property owner's Motion to Fix the Amount of Attorney's Fees and Costs to be paid by Respondent, Town of Davie, which was served upon Mr. Burke, our special outside counsel, on April 16, 2003. The matter has not yet been set for hearing. Pelican Coast and William Cuthbertson are seeking to recover \$14,166.50 in attorney's fees, along with \$1,474.18 in costs, or a total of \$15, 640.68. It is Mr. Burke's opinion that the Court's award of attorney's fees pursuant to Florida Statute §57.105 was of questionable validity and the Florida courts have not previously awarded attorney's fees under Florida Statute §57.105 against a respondent or appellee who did not prevail on appeal. Further, since the Town of Davie did not initiate this appeal proceeding, the Court's Order essentially provides that the Town should be required to pay attorney's fees because it did not confess error. As indicated at the Town Council Meeting of May 7, 2003, Mr. Burke is of the opinion that the Town has a reasonable chance of successfully appealing the Circuit Court's findings that attorney's fees should be awarded against the Town. He nevertheless, also has advised the Town that to appeal the Judge's Order would undoubtedly cause the Town to incur considerable additional costs and legal fees. Accordingly, he requested and the Town Council authorized Mr. Burke to offer the sum of \$6,500.00 to the property owner in settlement of his claim for attorney's fees and costs. Pursuant to the Town Council's authorization, Mr. Burke submitted the offer of settlement of \$6,500.00 to the property owner's attorney. Pelican Coast in turn, submitted a counter-proposal in the amount of \$9,336.68 of which amount \$1,474.18 appeared to be recoverable Court costs and the remaining \$7,862.50 of the counter-proposal pertains to attorney's fees. Pursuant to Mr. Burke's request to the Town Attorney, the Town Attorney presented the property owner's counter-proposal in the amount of \$9,336.68 to the Town Council at its August 20, 2003 Town Council Meeting and received direction from the Town Council to advise the

property owner that their latest settlement proposal was accepted. This was transmitted to Mr. Burke, who in turn, contacted and so advised the property owner. The Town Attorney since advised the Administration of this fact and pursuant to Mr. Burke's request, has asked that the Town transmit its check in the amount of \$9,336.68 to the Town Attorney's Office so that it in turn, can forward same to Mr. Burke for presentment to the property owner in full settlement of this matter. The parties will enter into a stipulated agreement relevant to the issue of attorney's fees and costs which they will file with the Court once Mr. Burke has possession of the Town's check.

9. **DePaola v. Town of Davie:** Plaintiff DePaola filed a lawsuit against the Town of Davie and the Town filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein who requested that both sides file Memoranda of Law in support of their positions and she took the case under advisement. Both sides did file their Memoranda of Law in support of their positions on the Town's Motion to Dismiss, and on November 13, 2002, the Court entered an Order granting the Town's Motion to Dismiss and entered an Order of Dismissal. The Court found that Mr. DePaola had administrative remedies as a career service employee, either by pursuing a civil service appeal or by a grievance procedure established under a collective bargaining agreement, but he had failed to pursue his administrative remedies. A copy the Court's Order of November 13, 2002, has been previously provided to the Town Council for its review. The Plaintiff DePaola filed a motion with the Court for re-hearing of the Town's Motion to Dismiss, which motion was denied by the Trial Court. The attorneys for DePaola filed a Notice of Appeal of the Trial Court's decision to the 4<sup>th</sup> District Court of Appeal where the matter is now pending, but failed to file their Appellate Brief within the time set by the Rules of Appellate Procedure. The Town Attorney spoke with Mr. Burke on August 26, 2003. As previously indicated, the Town's Motion to Dismiss filed with the 4<sup>th</sup> District Court of Appeal due to the Plaintiff's failure to file in a timely manner, its Appellate Brief was denied and the 4<sup>th</sup> District Court of Appeal extended the time in which the Plaintiff could file his Brief. Mr. Burke advised the Town Attorney that the Plaintiff has now filed his Brief and Mr. Burke's Office is preparing its Reply Brief which must be filed with the Court by September 9, 2003.
10. **Southern Homes of Davie, LLC v. Davie (Charleston Oaks Plat) Case No. 02-015674 (11):** The Town was served with a Summons and Complaint for Declaratory Judgment and Injunction and Petition for Writ of Mandamus with regard to Case Number 02-015674 (11) instituted by Southern Homes of Davie, LLC against the Town of Davie relevant to the "Charleston Oaks Plat". The Florida League of Cities has accepted responsibility for providing a defense to the Town of Davie relevant to this lawsuit and has assigned the case to Attorney Michael Burke. The Plaintiff is seeking both equitable relief and monetary damages against the Town. The Plaintiff is alleging that they have suffered injury as a result of the Town's refusal to process, review and/or approve its Site Plan Application while the Zoning in Progress has been in effect. They are seeking an Order declaring that the Plaintiff is entitled to approval of its Site Plan Application and that the Town be estopped to apply the "Zoning in Progress"; declaring that the Zoning in Progress does not exist and/or does not apply to Plaintiff's Site Plan Application and/or Plaintiff's property, and other relief. Since then, the Plaintiff has filed a second companion case also seeking a

Declaratory Judgment and Injunction and Petition for Mandamus against the Town of Davie with regard to the "Flamingo Plat". This too, has been accepted for defense by the Florida League of Cities. Both cases have been since consolidated for discovery purposes and Mr. Burke's firm has filed its response to each Complaint filed in the two lawsuits. On August 26, 2003, the Town Attorney spoke with Mr. Burke. Mr. Burke indicates that settlement of these consolidated cases is still pending. Mr. Burke received a settlement proposal through Mr. Laystrom's office and Mr. Burke anticipates preparing a redraft of the agreement and forwarding same to Mr. Spencer shortly now that Mr. Burke has returned from vacation. As indicated in the prior Town Attorney's Report, in the meantime, Southern Homes has taken the position that they were not required to dismiss the lawsuit until the site plans for their projects are approved by the Town. The site plan for the Flamingo Plat has been approved and the site plan for the Charleston Oaks Plat will be before the Site Plan Committee shortly. As the site plan applications are now moving forward, Mr. Burke anticipates that the settlement agreement dismissing the lawsuit should be finalized shortly.

11. **Asset Management Consultants of Virginia, Inc. v. Town of Davie:** The Town of Davie has been sued by Asset Management Consultants of Virginia, Inc., who are seeking a refund of a public service fee imposed on certain property owners by the Town pursuant to Ordinance No. 99-35 of the Town Code. The Town filed a Motion to Dismiss the Complaint along with a Memorandum of Law in support of the Town's position. The Town's position is that at the time of the passage of Ordinance No. 99-35 of the Davie Town Code, it was properly initiated and therefore, the Plaintiff is not entitled to a refund of the public services fees which were subsequently declared unconstitutional and contrary to Section 192.042 of the Florida Statutes by the Florida Supreme Court in 1999. The Town of Davie's Motion to dismiss the lawsuit was heard on Friday, November 15, 2002, and after Judge Greene heard lengthy oral argument on both sides, the Court granted the Town of Davie's Motion to Dismiss Plaintiff's Complaint. The Judge granted our Motion to Dismiss with Prejudice as to Count II, which was a claim by the Plaintiff against the Town of Davie for unjust enrichment with regard to the Town of Davie's collection of the public service fee which was subsequently ruled unconstitutional. The Judge also granted the Town's Motion to Dismiss Counts I and III in which the Plaintiff sought a declaratory judgment and a refund of the public services fee that was collected relevant to the Plaintiffs. The Judge also struck with prejudice that portion of Count III which sought prejudgment interest against the Town if the Plaintiff is successful. The Judge did give the Plaintiff 20 days in which to amend Count I and the balance of Count III. A copy of the Court's Order of November 15, 2002, was previously forwarded to the Town for distribution to the Mayor and Councilmembers. The Plaintiffs filed an Amended Complaint and Mr. Johnson's office filed an Answer to the remaining Count which seeks a refund of the public services fee that was collected from the Plaintiffs. Recently, the Town Attorney spoke with Mr. Johnson relevant to this case. Mr. Johnson indicated that the parties are continuing to conduct legal discovery in this case and that his office is in the process of preparing a Motion for Summary Judgment which he hopes to file with the Court in the near future.



12. **City of Cooper City v. Town of Davie:** The City of Cooper City has filed a lawsuit for Declaratory Judgment and Injunctive Relief and Alternative Petitions for Writ of Quo Warranto and Certiorari alleging that a recent ordinance and a recent resolution relevant to annexation are invalid. The Town Attorney's Office prepared an appropriate Motion to Dismiss and filed same as the Town's insurance carrier has refused to provide a legal defense to this action. As the Town Council has previously been advised, this office filed its Motion to Dismiss citing Cooper City's failure to comply with pertinent provisions of the Florida Statutes. Included within those enumerated provisions cited by the Town Attorney's Office, was Cooper City's failure to adhere to the "Intergovernmental Conflict Dispute Resolution" provisions of the Florida Statutes set forth in Chapter 164. Oral argument on the Town's Motion to Dismiss was heard on March 26, 2003 at which time the Judge indicated that this was the first time a matter such as this has come before him in 19 years on the bench and accordingly, he advised both sides that he would take this matter under advisement and get back to the attorneys shortly with his decision. The Judge thereafter, ordered that Cooper City's lawsuit is to be abated until Cooper City has initiated and exhausted the provisions set forth in Chapter 164. The Town and Cooper City will engage in the conflict resolution proceedings and attempt to resolve the matter without resorting to further legal remedies. As indicated in previous Litigation Reports, the Town Attorney's Office is confident in an ultimate successful outcome of this litigation and it is the Town Attorney's position that the Judge's abatement of Cooper City's lawsuit is further proof of the Town's contention that Cooper City has prematurely and inaccurately filed the present lawsuit. The initial meeting required under the "Intergovernmental Conflict Resolution" provisions of Florida Statutes Chapter 164 was held for April 17, 2003. The meeting was attended by the Town Administrator, Mr. Willi, the City Manager of Cooper City, Mr. Farrell, along with their attorneys. The meeting had been advertised and was open to the public. As a resolution to the conflict was not reached, accordingly, pursuant to Section 164.1055, a joint meeting of the municipalities will be held in order to resolve the conflict. If no ultimate resolution is achieved through the conflict resolution procedures set forth in Chapter 164, the Town Attorney's Office will renew its existing Motion to Dismiss this litigation. An Executive Session was held on June 4, 2003, during which the Council discussed litigation strategy and the issues to be considered at the joint meeting between the Davie Town Council and the City of Cooper City. The Town Council also gave direction to Mr. Willi to retain in his discretion, a surveyor and also, for the Administration and Town Attorney's Office to schedule a mutually convenient time for the joint meeting of the Davie Town Council and the Cooper City Commission. The Town Attorney's Office has been in constant contact with the attorneys for Cooper City and the Town Administrator in an effort to schedule a mutually convenient time for the joint meeting of the two governing bodies. The Town Clerk has recently provided the Town Attorney's Office with several dates for the joint meeting of the Town Council and the Cooper City Commission to be held towards the end of September, 2003. Those dates have been provided to Ms. Alderman along with the Town's position that it wishes no further extensions for the time for the joint meeting beyond September 30, 2003, as it wishes to conclude this process without any further delay.
13. **DMG Roadworks, LLC v. Town of Davie.** The property owner has filed a Petition for Writ of Certiorari regarding the Town of Davie's re-zoning of the parcel of land owned by

DMG Roadworks from the Broward County M4 Zoning District to the Town of Davie M3 Zoning District. This matter has been referred to special outside legal counsel, Michael Burke, who has filed an Answer on behalf of the Town in response to the property owner's Petition. As previously indicated, oral argument was held in this matter on August 12, 2003, and according to Mr. Burke, Judge Carney stated he was going to grant DMG's Petition for Writ of Certiorari and quash the Town Council's re-zoning of the Spur Road property to Davie M3. The Town Attorney spoke with Mr. Burke on August 26, 2003, and was advised that to date, a written Final Judgment had not yet been entered by Judge Carney. As soon as it is, the Town will have 30 days thereafter to seek further judicial review. Mr. Burke feels that the Town has a reasonable chance of reversing Judge Carney's Order on appeal and has asked the Town Attorney's Office to seek direction from the Town Council as to whether it wishes to seek further judicial review of the Trial Court's Order.

14. **MIGUEL LEAL V. OFFICER WILLIAM BAMFORD, ET AL:** The Plaintiff is suing 14 named police officers from various municipalities, including Lt. William H. Bamford, and K-9 Officer Banjire. It is his contention that in the course of his arrest, the officers used unnecessary force and therefore, violated his rights under 42 U.S.C. Section 1983. He is seeking compensatory damages of \$20,000,000.00 and punitive damages of \$20,000,000.00. On August 27, 2003, the Town Attorney spoke with Mr. McDuff regarding this matter. The Town has filed an appropriate response to the Plaintiff's Complaint. Mr. McDuff's law firm has deposed the Plaintiff and is moving forward with discovery. The Plaintiff, who is incarcerated, has not participated in most of the discovery procedures. As indicated previously, Mr. McDuff anticipates filing a Motion for Summary Judgment in the near future and has expressed his confidence that there is a good possibility that the Court may grant the Town's Motion for Summary Judgment in this case.
15. **TOWN OF DAVIE V. UHEL POLLY HAULING, INC.:** The Town recently initiated a lawsuit against this Defendant seeking injunctive relief and contending that it was tortiously interfering with the Town's exclusive franchise with Waste Management with regard to the disposal of solid waste. The Defendant has filed a Motion to Dismiss and oral argument is scheduled by the Court for early September, 2003. Recently, the Town Attorney's Office received word from the attorney for the Defendant that his client is willing to enter into a settlement agreement with regard to this litigation instituted by the Town Attorney's Office in Broward Circuit Court, as well as several accompanying Code Enforcement actions initiated by the Code Enforcement Division. The Town Attorney has been in close contact with Code Enforcement and as indicated in previous Town Attorney's Reports, prepared a proposed Stipulated Agreement between the Town of Davie and Uhel Polly Hauling, Inc. which was forwarded to Code Enforcement Director Stallone for his review. On August 13, 2003, the Town Attorney spoke with Mr. Stallone who indicated that he had reviewed the document and it was satisfactory. The Stipulation has therefore, been transmitted to the Defendant's attorney.
16. **SESSA, ET AL V. TOWN OF DAVIE:** The Town Attorney's Office recently received a Default Judgment against Jack M. Johnson. The Town Attorney's Office has also received an offer of settlement from Mr. Johnson's attorney which has been forwarded to the Town Staff for its consideration before presentment to the Town Council. A letter of settlement

has also been received from Lawrence Danielle regarding his property, and this too, has been provided to the Staff for its consideration. The Town Attorney's Office recently negotiated a settlement offer of \$20,000.00 with the property owner as settlement of its obligation on its road assessments. The settlement proposal was submitted to the Town Council for its consideration and accepted by the Town Council provided that it is paid within 30 days from the date of acceptance by the Town Council. The acceptance by the Town Council has been transmitted to Mr. Danielle's attorney and the Town Attorney's Office is awaiting receipt of the \$20,000.00 from the property owner.